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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Fong

(Principal coauthor: Senator Cedillo)

**(Coauthors: Assembly Members Coto, Eng, Fuentes, Furutani,
Lieu, and Torres)**

(Coauthor: Senator Yee)

February 27, 2009

An act to amend Section 1632 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Fong. Contracts: translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver to the other party, prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language, except as specified. Under existing law, failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Under existing law, these provisions apply to specified loans or extensions of credit subject to the Industrial Loan Law and the California Finance Lenders Law.

This bill would expand the scope of those provisions to instead require any person in a trade or business who, in the course of entering into any of the specified contracts or agreements, negotiates any material term in those languages, to deliver a translation, as described above, or a translation of one or more of the approved disclosures or forms, as specified. The bill would also make specified translation requirements applicable to loans or extensions of credit secured by real property and leases, subleases, and rental contracts or agreements, as specified. The bill would provide for administrative penalties against specified licensed persons for violations of these provisions. The bill would require the Department of Corporations and the Department of Financial Institutions to create new forms for these purposes based on specified forms of the Department of Real Estate. The bill would exempt federally chartered banks and credit unions from these provisions.

These provisions would be operative beginning 60 days after issuance of the forms, as provided, ~~but not later than July 1, 2010~~ *or on July 1, 2010, whichever is later.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1632 of the Civil Code, as amended by
2 Section 1 of Chapter 278 of the Statutes of 2008, is amended to
3 read:
4 1632. (a) The Legislature hereby finds and declares all of the
5 following:
6 (1) This section was enacted in 1976 to increase consumer
7 information and protections for the state's sizeable and growing
8 Spanish-speaking population.
9 (2) Since 1976, the state's population has become increasingly
10 diverse and the number of Californians who speak languages other
11 than English as their primary language at home has increased
12 dramatically.
13 (3) According to data from the United States Census of 2000,
14 of the more than 12 million Californians who speak a language
15 other than English in the home, approximately 4.3 million speak
16 an Asian dialect or another language other than Spanish. The top
17 five languages other than English most widely spoken by
18 Californians in their homes are Spanish, Chinese, Tagalog,

1 Vietnamese, and Korean. Together, these languages are spoken
2 by approximately 83 percent of all Californians who speak a
3 language other than English in their homes.

4 (b) Any person engaged in a trade or business who in the course
5 of entering into any of the contracts or agreements listed in
6 paragraphs (1) to (7), inclusive, of this subdivision and negotiates
7 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
8 whether orally or in writing, shall deliver to the other party to the
9 contract or agreement and prior to the execution thereof, either (1)
10 a translation of the contract or agreement in the language in which
11 the contract or agreement was negotiated, which includes a
12 translation of every term and condition in that contract or
13 agreement, or (2) a translation of one or more of the approved
14 disclosures, forms, or both discussed in subdivisions (c) to (e),
15 inclusive, and (m), as applicable to the specific contract or
16 agreement at issue.

17 (1) A contract or agreement subject to the provisions of Title 2
18 (commencing with Section 1801) of, and Chapter 2b (commencing
19 with Section 2981) and Chapter 2d (commencing with Section
20 2985.7) of Title 14 of, Part 4 of Division 3.

21 (2) A loan or extension of credit secured other than by real
22 property, or unsecured, for use primarily for personal, family or
23 household purposes.

24 (3) A lease, sublease, rental contract or agreement, or other term
25 of tenancy contract or agreement, for a period of longer than one
26 month, covering a dwelling, an apartment, or mobilehome, or other
27 dwelling unit normally occupied as a residence.

28 (4) A loan or extension of credit for use primarily for personal,
29 family or household purposes where the loan or extension of credit
30 is subject to the provisions of Article 7 (commencing with Section
31 10240) of Chapter 3 of Part 1 of Division 4 of the Business and
32 Professions Code, or is made by a supervised financial
33 organization.

34 (5) Notwithstanding paragraph (2), a reverse mortgage as
35 described in Chapter 8 (commencing with Section 1923) of Title
36 4 of Part 4 of Division 3.

37 (6) A contract or agreement, containing a statement of fees or
38 charges, entered into for the purpose of obtaining legal services,
39 when the person who is engaged in business is currently licensed

1 to practice law pursuant to Chapter 4 (commencing with Section
2 6000) of Division 3 of the Business and Professions Code.

3 (7) This section shall not apply to federally chartered banks or
4 credit unions.

5 (c) For a loan subject to this part and to Article 7 (commencing
6 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
7 Business and Professions Code, the delivery of a translation of the
8 statements, disclosures, or both to the borrower required by Section
9 10240 or 10241 of the Business and Professions Code in any of
10 the languages specified in subdivision (b) in which the contract or
11 agreement was negotiated, is in compliance with subdivision (b).

12 (d) For a loan or extension of credit secured other than by real
13 property, or unsecured for use primarily for personal, family, or
14 household purposes, delivery by a supervised financial organization
15 of a translation of the disclosures required by Regulation M or
16 Regulation Z, and, if applicable, Division 7 (commencing with
17 Section 18000) or Division 9 (commencing with Section 22000)
18 of the Financial Code in any of the languages specified in
19 subdivision (b) in which the contract or agreement was negotiated,
20 prior to the execution of the contract or agreement, is in compliance
21 with subdivision (b).

22 (1) “Regulation M” and “Regulation Z” mean any rule,
23 regulation, or interpretation promulgated by the Board of
24 Governors of the Federal Reserve System and any interpretation
25 or approval issued by an official or employee duly authorized by
26 the board to issue interpretations or approvals dealing with,
27 respectively, consumer leasing or consumer lending, pursuant to
28 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
29 1601 et seq.).

30 (2) As used in this section, “supervised financial organization”
31 means a bank, savings association as defined in Section 5102 of
32 the Financial Code, credit union, or holding company, affiliate, or
33 subsidiary thereof, or any person subject to Article 7 (commencing
34 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
35 Business and Professions Code, or Division 7 (commencing with
36 Section 18000) or Division 9 (commencing with Section 22000),
37 or Division 20 (commencing with Section 50000) of the Financial
38 Code.

39 (e) For a loan or extension of credit secured by real property
40 made by a supervised financial organization, as described in

1 paragraph (4) of subdivision (b), delivery of the form disclosures
2 described in subdivision (m) is in compliance with subdivision
3 (b). Delivery of such disclosures is required whether or not the
4 transaction is also subject to the requirements of Article 7
5 (commencing with Section 10240) of Chapter 3 of Part 1 of
6 Division 4 of the Business and Professions Code, and subdivision
7 (c) of this section.

8 The supervised financial organization shall provide the forms
9 to the borrower no later than seven calendar days before closing,
10 and, if any of the loan terms summarized change after provision
11 of the translation but prior to consummation of the loan, the
12 supervised financial organization shall provide an updated version
13 of the forms before closing.

14 (f) At the time and place where an applicable contract or
15 agreement is executed, a notice in the language that the contract
16 or agreement was negotiated, shall be clearly and conspicuously
17 displayed in an unobstructed view, that states the translation
18 requirements in subdivision (b). If the person does business at
19 more than one location or branch, the requirements of this section
20 shall apply only with respect to the location or branch at which
21 the language in which the contract or agreement was negotiated
22 is used.

23 (g) At the time and place where a lease, sublease, or rental
24 contract or agreement described in subdivision (b) is executed,
25 notice in any of the languages specified in subdivision (b), in which
26 the contract or agreement was negotiated, shall be provided to the
27 lessee or tenant to the effect that the person described in
28 subdivision (b) is required to provide a contract or agreement in
29 the language in which the contractor agreement was negotiated,
30 or a translation of the disclosure required by law in the language
31 in which the contract or agreement was negotiated, as the case
32 may be.

33 (h) (1) As used in this section, “contract” or “agreement,” means
34 the document creating the rights and obligations of the parties and
35 includes any subsequent document making substantial changes in
36 the rights and obligations of the parties. “Contract” or “agreement”
37 does not include any subsequent documents authorized or
38 contemplated by the original document such as periodic statements,
39 sales slips or invoices representing purchases made pursuant to a
40 credit card agreement, a retail installment contract or account or

1 other revolving sales or loan account, memoranda of purchases in
2 an add-on sale, or refinancing of a purchase as provided by, or
3 pursuant to, the original document.

4 (2) “Contract” or “agreement” does not include a home
5 improvement contract as defined in Sections 7151.2 and 7159 of
6 the Business and Professions Code, nor does it include plans,
7 specifications, description of work to be done and materials to be
8 used, or collateral security taken or to be taken for the retail buyer’s
9 obligation contained in a contract for the installation of goods by
10 a contractor licensed pursuant to Chapter 9 (commencing with
11 Section 7000) of Division 3 of the Business and Professions Code,
12 if the home improvement contract or installation contract is
13 otherwise a part of a contract described in subdivision (b).

14 (3) Matters ordinarily incorporated by reference in contracts or
15 agreements as described in paragraph (3) of subdivision (b),
16 including, but not limited to, rules and regulations governing a
17 tenancy and inventories of furnishings to be provided by the person
18 described in subdivision (b), are not included in the term “contract”
19 or “agreement.”

20 (i) (1) This section does not apply to any person engaged in a
21 trade or business who negotiates primarily in a language other than
22 English, as described by subdivision (b), if the party with whom
23 he or she is negotiating is a buyer of goods or services, or receives
24 a loan or extension of credit, or enters an agreement obligating
25 himself or herself as a tenant, lessee, or sublessee, or similarly
26 obligates himself or herself by contract or lease, and the party
27 negotiates the terms of the contract, lease, or other obligation
28 through his or her own interpreter.

29 (2) As used in this subdivision, “his or her own interpreter”
30 means a person, not a minor, able to speak fluently and read with
31 full understanding both the English language and any of the
32 languages specified in subdivision (b) in which the contract or
33 agreement was negotiated, and who is not employed by, and whose
34 services are not made available through, the person engaged in the
35 trade or business.

36 (j) Notwithstanding subdivision (b), a translation may retain the
37 following elements of the executed English-language contract or
38 agreement without translation: names and titles of individuals and
39 other persons, addresses, brand names, trade names, trademarks,
40 registered service marks, full or abbreviated designations of the

1 make and model of goods or services, alphanumeric codes,
2 numerals, dollar amounts expressed in numerals, dates, and
3 individual words or expressions having no generally accepted
4 non-English translation.

5 (k) The terms of the contract or agreement which is executed
6 in the English language shall determine the rights and obligations
7 of the parties. However, the translation of the contract or the
8 disclosures required by subdivisions (c) to (e), inclusive, and (m),
9 in any of the languages specified in subdivision (b) in which the
10 contract or agreement was negotiated shall be admissible in
11 evidence to show that no contract was entered into because of a
12 substantial difference in the material terms and conditions of the
13 contract and the translation.

14 (l) (1) "Licensed person" means a real estate broker licensed
15 under the Real Estate Law (Part 1 (commencing with Section
16 10000) of Division 4 of the Business and Professions Code), a
17 finance lender or broker licensed under the California Finance
18 Lenders Law (Division 9 (commencing with Section 22000) of
19 the Financial Code), a residential mortgage lender licensed under
20 the California Residential Mortgage Lending Act (Division 20
21 (commencing with Section 50000) of the Financial Code), a
22 commercial or industrial bank organized under the Banking Law
23 (Division 1 (commencing with Section 99) of the Financial Code),
24 a savings association organized under the Savings Association
25 Law (Division 2 (commencing with Section 5000) of the Financial
26 Code), and a credit union organized under the California Credit
27 Union Law (Division 5 (commencing with Section 14000) of the
28 Financial Code).

29 (2) (A) A licensing agency may, after appropriate notice and
30 opportunity for hearing, by order, levy administrative penalties
31 against a person who violates any provision of this section, and
32 the person shall be liable for administrative penalties, up to the
33 amounts of two thousand five hundred dollars (\$2,500) for the first
34 violation, five thousand dollars (\$5,000) for the second violation,
35 and ten thousand dollars (\$10,000) for each subsequent violation.
36 Except for licensing agencies exempt from the provisions of the
37 Administrative Procedure Act, any hearing shall be held in
38 accordance with the Administrative Procedure Act (Chapter 5
39 (commencing with Section 11500) of Part 1 of Division 3 of Title

2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(B) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law, to administer and enforce this section, including, but not limited to, investigating and examining the licensed person's books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this section.

(C) Any licensed person who violates any provision of this section shall be deemed to have violated that person's licensing law.

(D) Nothing in this section shall be construed to impair or impede the Attorney General from bringing an action to enforce this division.

(m) The Department of Corporations and the Department of Financial Institutions shall create forms to be made available in each of the languages set forth in subdivision (b) for use by a supervised financial organization to summarize the terms of a mortgage loan pursuant to subdivision (e). In creating the forms, the Department of Corporations and the Department of Financial Institutions may modify, or use as guidance, the Department of Real Estate's Forms 883 and 885.

~~(n) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he or she made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.~~

SEC. 2. The requirements applying to supervised financial organizations, as well as all other amendments herein, shall be

1 operative beginning 60 days after issuance of the forms specified
2 in subdivision (m) by the Department of Corporations and the
3 Department of Financial Institutions, ~~but no later than July 1, 2010~~
4 *or on July 1, 2010, whichever is later.*

5 SEC. 3. The provisions of this act are severable. If any
6 provision of this act or its application is held invalid, that invalidity
7 shall not affect other provisions or applications that can be given
8 effect without the invalid provision or application.

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